

REMARKS

Claims 14 and 20-23 were pending in this application; claims 1-13 and 15-19 had been canceled earlier. Claims 21-23 had previously been withdrawn and are hereby canceled. No other claim amendments are made. Upon entry of the amendment, only claims 14 and 20 will remain under examination.

Because this supplemental amendment ONLY cancels claims that were already withdrawn, and was suggested by the Examiner in the Advisory Action, no further consideration is required for entry of this amendment. Entry of the amendment after the filing of the notice of appeal is thus appropriate under 37 CFR 41.33 and 37 CFR 1.116, even though a Notice of Appeal has been filed: entry of the amendment is therefore respectfully requested.

In the last Office Action, the only outstanding issue was a rejection under 103 based on Bruce, et al., WO 03/072557. As set forth in the previous response, the reference should not be viewed as prior art because it was co-owned at the time the present invention was made. The Examiner acknowledged the previous response, but noted that the previous response did not specifically state that Bruce was co-owned at the time of the invention. This supplemental response rectifies that by providing language recommended by the Examiner, and thus this supplemental response replies with a requirement for the form of presentation of the statement of co-ownership [MPEP 1206 (I)(B)] and should place the application in condition for allowance. Thus consideration of the supplemental response is appropriate under 37 CFR 41.33.

Bruce was cited as prior art only under 35 USC 102(e). This application and Bruce were, at the time the invention claimed in the present application was made, both owned by Novartis AG. Bruce is therefore disqualified as prior art under 35 USC 103(c). Accordingly, the only outstanding basis for rejection is overcome and the pending claims are in condition for allowance.

The Examiner noted in the Advisory Action an additional reference, which was only published recently: U.S. publication 2010/0093690 ('690). The '690 reference is related to Bruce.

The '690 reference represents subject matter that was owned by Novartis AG at the time the invention in the present application was made. Therefore it, too, is disqualified as a 102(e) reference under 35 USC 103(c).

The undersigned has very recently been asked to represent the Applicant before the PTO for this matter, and is acting as an authorized representative; the correspondence address for the application has NOT been changed. However, if it is determined that a telephone conference would expedite the prosecution of this application, the Examiner is invited to telephone the undersigned at the number given below.

In the event the U.S. Patent and Trademark Office determines that an extension and/or other relief is required, applicant petitions for any required relief including extensions of time and authorizes the Commissioner to charge the cost of such petitions and/or other fees due in connection with the filing of this document to Deposit Account No. 03-1952 referencing docket no. 636092802000. However, the Commissioner is not authorized to charge the cost of the issue fee to the Deposit Account.

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Respectfully submitted,

Electronic signature: /Michael G. Smith/
Michael G. Smith

Registration No.: 44,422
MORRISON & FOERSTER LLP
12531 High Bluff Drive, Suite 100
San Diego, California 92130-2040
(858) 720-5113